

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

AQUASOURCE UTILITY INC.

FOR

LAND OR' UTILITY COMPANY, INC. SEWAGE TREATMENT PLANT
(VPDES PERMIT NO. VA0060887)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) and 10.1-1185 between the State Water Control Board and AquaSource Utility, Inc. regarding the Land Or' Utility sewage treatment plant for the purpose of resolving certain violations of the State Water Control Law and Regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.

3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “AquaSource” means AquaSource Utility Inc., a Texas corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “STP” or “facility” means the Land Or’ Utility Company, Inc. sewage treatment plant. Land Or’ Utility Company, Inc. is a Virginia corporation.
8. “NVRO” means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
9. “Permit” means Virginia Pollution Discharge Elimination System Permit No. VA0060887.

SECTION C: Findings of Fact and Conclusions of Law

1. AquaSource owns and operates the STP which it purchased on October 21, 1999. The STP discharges wastewater to an unnamed tributary of South River in the York River Basin. Discharges of wastewater are the subject of the Permit that was reissued on December 20, 2001, and expires on December 20, 2006.
2. The Board has evidence to indicate that the AquaSource has violated VPDES Permit Regulation 9 VAC 25-31-50.A for exceedences of the total kjeldahl nitrogen (“TKN”) Permit effluent limit in May 2001 and March through July 2002. DEQ NVRO issued AquaSource Warning Letters and a Notice of Violation (“NOV”) for those exceedences as follows: WL No. W2001-07-N-1014 issued July 10, 2001; WL No. W2002-02-N-1017 issued February 14, 2002; WL No. W2002-05-N-1010 issued May 17, 2002; WL No. W2002-06-N-1015 issued June 10, 2002; WL No. W2002-07-N-1008 issued July 1, 2002; WL No. W2002-07-N-1016 issued July 31, 2002; and NOV No. W2002-09-N-0001 issued September 3, 2002.
2. Because the STP was not designed to treat TKN and ammonia, the Permit included a four-year schedule for achieving compliance with those parameters by December 2000. Pursuant to the schedule, the STP’s former owners monitored the facility’s effluent under a variety of different operating conditions in order to evaluate removal efficiencies for TKN

and ammonia. These evaluations continued through July 1999, shortly after which the STP was sold to AquaSource.

3. After analyzing the existing TKN and ammonia data, AquaSource notified DEQ in a letter dated March 27, 2000, that the evaluations of plant performance indicated that the STP could achieve compliance with final Permit effluent limits for those parameters through changes in operations at the facility, including chemical adjustments and increased aeration. Although AquaSource implemented the proposed operational changes, those improvements were not sufficient to ensure consistent compliance with final Permit effluent limits for TKN and ammonia.
4. On January 15, 2003, AquaSource submitted a plan and schedule for upgrading the STP to ensure consistent compliance with TKN Permit effluent limits. The plan and schedule have been incorporated into Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a), and (8d) orders AquaSource, and AquaSource agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders AquaSource, and AquaSource agrees, to pay a civil charge of \$1,820.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, AquaSource shall indicate that the payment is submitted pursuant to this Order and shall include the Federal Identification Number for AquaSource.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of AquaSource, for good cause shown by AquaSource, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations specifically identified herein, including those matters addressed in the Warning Letters issued on July 10, 2001, February 14, May

17, June 10, July 1, and July 31, 2002 and the NOV issued on September 3, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order, provided, however, that subsequent exceedences of the Permit limits related to the start up, shake down, or implementation of actions required by this Order shall not constitute subsequent violations so long as AquaSource is otherwise meeting the requirements of Appendix A hereto. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, AquaSource admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. AquaSource consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. AquaSource declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2 - 4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by AquaSource to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. AquaSource shall be responsible for its failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. AquaSource shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AquaSource shall notify the DEQ Regional Director of NVRO in writing when

circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order.

Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which AquaSource intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and AquaSource. Notwithstanding the foregoing, the AquaSource agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to AquaSource. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve AquaSource from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, AquaSource voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

Robert G. Burnley, Director

Department of Environmental Quality

AquaSource voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of

_____, 2003 by _____, who is
(name)

_____ for AquaSource.
(title)

Notary Public

My commission expires: _____.

APPENDIX A
SCHEDULE OF COMPLIANCE

AquaSource shall:

1. By June 1, 2003, complete construction of the STP's upgrade pursuant to the approved plan and schedule submitted by AquaSource on January 14, 2003, which includes improvements to the STP's aeration system and notify the Virginia Department of Health of any equipment replacement; and
2. Pending completion of the upgrade, operate the STP in a manner that produces the best quality effluent of which it is capable in order to minimize any additional exceedences of the TKN Permit effluent limit and impacts to water quality that may occur while the upgrade is under construction.